IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2450 OF 2007

IPAY Clearing Services Pvt. Ltd. ..Petitioner.
Vs.
Appraising Officer and ors. ..Respondents.

Mr.S.M.Shah for the Petitioner.

Mr.A.S.Rao with Mrs.H.P.Shah for the Respondents.

CORAM : F.I. REBELLO & R.S. MOHITE, JJ.
DATED : 7TH DECEMBER,2007.

PC :

1. Rule.

2. Heard forthwith.

3. It is the grievance of the petitioner that he had cleared the consignment pursuant to letter dated 17.7.2006 and subject to what is set out therein. The same was accepted by the Assessing Officer. The relevant portion of the letter reads as under.

> "However, due to the urgency of this consignment we would like to pay the duty along with interest of Rs.32,31,892/- as agreed. You are requested to kindly issue a speaking order for the same and allow the clearance at the earliest."

The noting on the representation dated 18.7.2006 shows that the petitioner was allowed to clear the consignment subject to what has been reproduced above. In other words, the authority agreed to pass a speaking order. It is the grievance of the petitioner that no speaking order was however, passed.

3. Based on the contention that under the relevant notification the goods were exempted from duty, the petitioner had applied for refund of duty amount already paid and that was rejected on the ground that appeal was not preferred and the application was dismissed.

4. On behalf of the respondent, their learned counsel invited our attention to the circular of the Board, to contend that there is no requirement of a speaking order.

. However, a reading of Paragraph-2 of the said notification, the following sentence would be relevant.

> "At the request of the importer, the proper officer is required to intimate in writing, the grounds for doubting the truth of accuracy of the declared value and provide a reasonable opportunity of being heard, before taking a final decision".

5. We have heard the learned counsel for the parties. In our opinion, the order of Assessment Officer is subject to appeal under Section-128(1) of the Customs Act, 1962. That would be in the event an order has been passed under Section 47 of the Act. Suffice it to say that the respondents have not intimated the reasons in writing to the petitioner for rejecting its claim as agreed considering the letter of 17.7.2006. Apart from that, the Board Circular contemplates that when the importer seeks opportunity of being heard, an opportunity should be given before taking the final decision in the matter. In the instant case the petitioner's representation was accepted by the Assessing Officer. The Assessing Officer agreed to pass a speaking order but no order was passed. In these circumstances, petitioner has been denied a fair opportunity of putting forward his case on the points as to the value of the goods and that the goods are exempted.

6. In the light of the above, in our opinion, ends of justice would be met if the petition is disposed of by passing the following order.

ORDER

. The order of Assessment Officer is set aside and

consequently also the order rejecting the petitioner's claim for refund. The Assessing Officer is directed to pass a fresh order on the Bill of Entry after giving opportunity to the petitioner. Rule is made absolute accordingly. No order as to costs.

(R.S. MOHITE, J.) **(F.I. REBELLO, J.)**